

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT
Thurgood Marshall U.S. Courthouse 40 Foley Square, New York, NY 10007 Telephone: 212-857-8500

MOTION INFORMATION STATEMENT

Docket Number(s): 14-2949 Caption [use short title]

Motion for: Leave to file opposition brief under seal. Boies, Schiller & Flexner LLP v. Marriott Int'l

Set forth below precise, complete statement of relief sought:

Appellee Host Hotels & Resorts, Inc. seeks leave to file its Opposition brief under seal.

MOVING PARTY: Host Hotels & Resorts, Inc.

☐ Plaintiff

☒ Defendant

☐ Appellant/Petitioner

☒ Appellee/Respondent

OPPOSING PARTY: Boies, Schiller & Flexner LLP

MOVING ATTORNEY: Jordan B. Leader

[name of attorney, with firm, address, phone number and e-mail]

OPPOSING ATTORNEY: David A. Barrett

Proskauer Rose LLP

11 Times Square, New York NY 10036

212-969-2900; jleader@proskauer.com

Court-Judge/Agency appealed from: United States District Court for the Southern District of New York; McMahon, J.

Please check appropriate boxes:

Has movant notified opposing counsel (required by Local Rule 27.1):



Yes

☐ No (explain):

Opposing counsel's position on motion:



Unopposed

☐ Opposed

☐ Don't Know

Does opposing counsel intend to file a response:



Yes

☒ No

☐ Don't Know

**FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND
INJUNCTIONS PENDING APPEAL:**

Has request for relief been made below?



Yes



No

Has this relief been previously sought in this Court?



Yes



No

Requested return date and explanation of emergency:

Is oral argument on motion requested?



Yes



No

(requests for oral argument will not necessarily be granted)

Has argument date of appeal been set?



Yes



No

If yes, enter date:

Signature of Moving Attorney:

/s/ Jordan B. Leader

Date: 11/10/14

Service by: ☒ CM/ECF



Other [Attach proof of service]

**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

BOIES SCHILLER & FLEXNER LLP,

Appellant,

MADISON 92nd STREET ASSOCIATES,
LLC,

Plaintiff,

v.

HOST HOTELS & RESORTS, INC.,

Defendant-
Appellee,

COURTYARD MANAGEMENT
CORPORATION, MARRIOTT
INTERNATIONAL, INC.,
DIAMONDROCK HOSPITALITY CO., and
the NEW YORK HOTEL & MOTEL
TRADES COUNCIL, AFL-CIO,

Defendants,

Docket No. 14-2949-cv

**DECLARATION OF JORDAN B. LEADER IN SUPPORT
OF APPELLEE HOST HOTELS & RESORTS, INC.'S
MOTION TO FILE BRIEF UNDER SEAL**

I, JORDAN B. LEADER, declare pursuant to 28 U.S.C. §1746:

1. I am an attorney admitted to practice in this Court, and I am Senior Counsel
at the law firm of Proskauer Rose LLP, attorneys for Defendant-Appellee Host

Hotels & Resorts, Inc. (“Host”). I submit this declaration in support of Host’s Motion to File Brief Under Seal.

2. This is an appeal from an award of sanctions by the District Court against Non-Party Appellant Boies, Schiller & Flexner LLP (“BSF”), Host’s former counsel, in connection with BSF’s representation of Plaintiff Madison 92nd Street Associates LLC in the underlying action. The appeal involves certain attorney-client privileged advice that BSF provided to Host, which was withheld from the public record in the District Court.

3. On March 18, 2013, the District Court granted Host permission to file its motion for sanctions against BSF under seal. (D.E. 35; attached as Exhibit 1.)

4. On April 18, 2013, the District Court granted BSF permission to file its opposition papers under seal. (D.E. 54; attached as Exhibit 2.)

5. On May 2, 2013, the District Court granted Host permission to file its reply papers under seal. (D.E. 56; attached as Exhibit 3.)

6. On October 16, 2013, the District Court issued a Decision and Order granting Host’s motion for sanctions against BSF (the “Sanctions Order”). (D.E. 94.) The District Court sealed the Sanctions Order until further order of the Court. (*Id.* at unnumbered pages 1, 26-27.) The Sanctions Order remains sealed and is not attached as an exhibit herein.

7. On October 31, 2013, the District Court issued a partially redacted public version of the Sanctions Order. (D.E. 99.)

8. On October 10, 2014, this Court granted BSF permission to file its appellate brief under seal. (D.E. 111; attached as Exhibit 4.)

9. Host's opposition brief is due on November 12, 2014. Host's brief will cite to portions of the record that have been filed under seal.

10. Accordingly, Host respectfully requests that the Court permit Host to file its opposition brief under seal and, within seven days after, to file a redacted public version of its brief.

11. BSF, the Appellant here, does not oppose this motion.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: November 10, 2014

Respectfully submitted,

By: /s/ Jordan B. Leader
Richard M. Goldstein
Kevin J. Perra
Jordan B. Leader
Boris Zeldin
PROSKAUER ROSE LLP
Eleven Times Square
New York, New York 10036
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*Attorneys for Defendant-
Appellee Host Hotels &
Resorts, Inc.*

EXHIBIT 1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
MADISON 92nd STREET ASSOCIATES, INC.

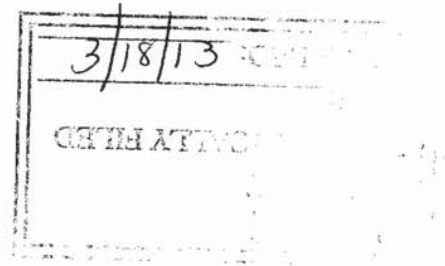
Plaintiff,

13 Civ. 291 (CM)

-against-

MARRIOTT INTERNATIONAL, INC., HOST
HOTELS & RESORTS, INC., DIAMONDROCK
HOSPITALITY CO., and the NEW YORK HOTEL
& MOTEL TRADES COUNCIL, AFL-CIO,

Defendants.
-----X



ORDER

McMahon, J.:

The Clerk of the Court is directed to file Defendant Host Hotels & Resorts, Inc.'s motion for sanctions against Boies, Schiller & Flexner LLP and supporting papers under seal. It shall remain under seal until further order of this Court.

So ordered.

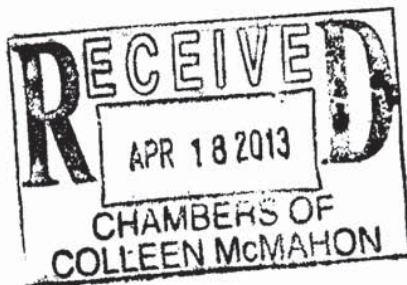
Dated: March 18, 2013

A handwritten signature in black ink, appearing to be 'Peter H. ...', written over a horizontal line. Below the line, the text 'U.S.D.J.' is printed.

U.S.D.J.

BY ECF TO ALL COUNSEL

EXHIBIT 2



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MICHAEL S. ROSS
ONE GRAND CENTRAL PLACE
60 EAST 42ND STREET
FORTY-SEVENTH FLOOR
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US SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 4/19/13

MEMO ENDORSED

April 18, 2013

BY FACSIMILE

Honorable Colleen McMahon
United States District Judge
Southern District of New York
Daniel Patrick Moynihan Courthouse
500 Pearl Street, Room 1350
New York, New York 10007

Re: Madison 92nd Street Associates, LLC v. Marriott International, Inc., et al.
13 Civ 0291 (CM).

Dear Judge McMahon:

I am counsel for Boies Schiller & Flexner, LLP ("Boies Schiller") in connection with the sanctions motion in the above-captioned case. On March 18, 2013 Your Honor issued an Order directing that Defendant Host Hotels & Resorts, Inc.'s ["Host's"] motion for sanctions against Boies Schiller and supporting papers be filed under seal. On March 21, 2013, Your Honor endorsed the letter of Proskauer Rose LLP (counsel to Host), dated March 19, 2013, which requested that Host be permitted to file electronically through the Court's CM/ECF system a redacted version of its motion for sanctions. Boies Schiller's response papers to Host's sanctions motion are due today, April 18, 2013. My firm will be filing a redacted version of Boies Schiller's response papers through the Court's CM/ECF system shortly. (My firm provided the Proskauer firm with a complete, unredacted, electronic version of Boies Schiller's response papers on April 16, 2013, and Proskauer subsequently advised my firm of the material it wished to have redacted from those papers.)

My office has spoken with the Court's Records Management Department by telephone, and it is our understanding that in order for Boies Schiller's papers to be filed under seal – even though they are responsive papers – the Clerk would need a separate signed order or request letter from Your Honor directing that the papers be filed under seal. Accordingly, I would respectfully request that Your Honor endorse this letter permitting Boies Schiller's full and unredacted response papers to

LAW OFFICES OF
MICHAEL S. ROSS

Honorable Colleen McMahon
April 18, 2013
Page 2

be filed under seal with the Court tomorrow, April 19, 2013. Courtesy copies of the unredacted and redacted versions of Boies Schiller's response papers will also be delivered to Your Honor's chambers tomorrow.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael S. Ross", with a stylized flourish at the end.

Michael S. Ross

cc: All Counsel

EXHIBIT 3

Proskauer

Proskauer Rose LLP Eleven Times Square New York, NY 10036-8299

| |
|----------------------|
| USDS SDNY |
| DOCUMENT |
| ELECTRONICALLY FILED |
| DOC #: |
| DATE FILED: 5/2/13 |

May 1, 2013

By Facsimile

Hon. Colleen McMahon
 United States District Judge
 United States District Court, Southern District of New York
 500 Pearl Street, Room 1350
 New York, NY 10007

Jordan B. Leader
 Senior Counsel
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 f 212.969.2900
 jleader@proskauer.com
 www.proskauer.com

MEMO ENDORSED

Re: *Madison 92nd Street Associates, LLC v. Marriott International, Inc., et al.*
 13 Civ. 0291 (CM)

Dear Judge McMahon:

We represent defendant Host Hotels & Resorts, Inc. ("Host") in the above-referenced action. We write with respect to two issues related to the filing of Host's reply memorandum of law in support of its motion for sanctions against Boies, Schiller & Flexner LLP ("BSF").

First, on March 18, 2013, Your Honor entered an Order directing the Clerk to file Host's motion and any supporting papers under seal. On March 21, 2013, Your Honor granted permission for Host to file a redacted version of its motion via the Court's CM/ECF system. On April 18, 2013, Your Honor granted permission for BSF to file its response papers under seal.

Host's reply memorandum is due on May 2, 2013 and Host intends to file a redacted version through the Court's CM/ECF system on that date. The Court's Records Management Department has informed us that a separate signed order is required for Host to be able to file its reply under seal. Accordingly, Host respectfully requests that it be allowed to file its unredacted reply memorandum under seal with the Court.

Second, Host respectfully requests, pursuant to Rule IV(C) of Your Honor's Individual Practices, permission to file a reply memorandum in excess of the maximum number of pages allowed under Your Honor's rules. On April 15, 2013, Your Honor granted BSF's request to file a 35-page opposition memorandum. In order to adequately address the arguments raised therein, Host respectfully requests permission to file a 13-page reply memorandum.

Respectfully submitted,

Jordan B. Leader
 Jordan B. Leader

cc: All Counsel of Record
 Boies Schiller & Flexner LLP

Colleen McMahon

*Un redacted
 hand copy
 7 all
 briefs*

*5/2/2013 Reply memo
 to be filed
 under seal - 13
 pages. Please make
 sure chambers
 have*

EXHIBIT 4

**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 10th day of October, two thousand and fourteen.

Before: Debra Ann Livingston,
Circuit Judge.

Boies, Schiller & Flexner LLP,
Appellant,

Madison 92nd Street Associates, LLC,
Plaintiff,

v.

Host Hotels & Resorts, Inc.,
Defendant-Appellee,

Marriott International, Inc., *et al.*,
Defendants.

ORDER

Docket No. 14-2949

Appellant moves for leave to file a sealed brief, publicly filing a redacted version thereof within 7 days of the filing of the sealed brief.

IT IS HEREBY ORDERED that the motion is GRANTED.

For the Court:
Catherine O'Hagan Wolfe,
Clerk of Court


Catherine O'Hagan Wolfe

